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5 Attorneys for Defendants
7 GAP INTERNATIONAL SALES, INC.,
8 THE GAP, INC., BANANA REPUBLIC,
LLC, and OLD NAVY, LLC

Attorneys for Plaintiffs
GABANA GULF DISTRIBUTION, LTD., and
GABANA DISTRIBUTION, LTD.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

15 GABANA GULF DISTRIBUTION, LTD., a
company organized under the laws of the
16 United Kingdom, and GABANA
DISTRIBUTION, LTD., a company organized
17 under the laws of the United Kingdom,

Case No. C 06 2584 CRB

**STIPULATION AND [PROPOSED]
ORDER OF DISMISSAL WITH
PREJUDICE**

Plaintiffs,

19 v.

20 GAP INTERNATIONAL SALES, INC., a
21 Delaware corporation, THE GAP, INC., a
22 Delaware corporation, BANANA REPUBLIC,
LLC, a Delaware limited liability company,
and OLD NAVY, LLC, a Delaware limited
liability company,

Defendants.

STIPULATION

Plaintiffs (collectively, “Gabana”) and defendants (collectively, “Gap”) hereby stipulate and agree as follows:

1. Gabana filed its original complaint in this action on April 14, 2006, and filed its operative Second Amended Complaint on October 31, 2007, asserting claims for breach of contract, breach of the implied covenant of good faith and fair dealing, fraud, and unfair competition. *See* Docket No. 241.

2. Gap counterclaimed for breach of contract, breach of the implied covenant of good faith and fair dealing, and unfair competition. *See* Docket No. 36.

3. On November 19, 2007, this Court granted summary judgment for Gap on Gabana's claims for breach of contract and fraud, but denied Gap's motion for summary judgment on Gabana's claims for breach of the implied covenant of good faith and fair dealing and unfair competition. *See* Docket No. 285.

4. The Court also granted summary judgment for Gabana on Gap's claim for breach of the implied covenant (*see id.*), but denied Gabana's motion for summary judgment on Gap's contract claim, a ruling the Court reaffirmed in denying Gabana's motion for reconsideration on December 10, 2007. *See* Docket No. 299.

5. The claims remaining in this case after this Court’s summary-judgment rulings were Gabana’s claims for breach of the implied covenant of good faith and fair dealing, and for unfair competition; and Gap’s claim for breach of contract (the “Remaining Claims”).

6. On December 17, 2007, the parties stipulated that in the event that the Court of Appeals were to affirm this Court’s summary-judgment ruling on Gabana’s breach of contract claim, the parties would dismiss all of the Remaining Claims with prejudice, each side bearing its own fees and costs, thus ending this case. *See* Docket No. 300-2 ¶ 3.

7. The Court of Appeals for the Ninth Circuit affirmed this Court’s summary-judgment ruling on August 24, 2009. *See* Docket No. 319. On September 17, 2009, the Ninth Circuit denied Gabana’s Petition for Panel Rehearing. *See* Docket No. 321.

8. Pursuant to their December 17, 2007 stipulation, therefore, the parties now

1 respectfully request that this Court dismiss the Remaining Claims with prejudice, each side
2 bearing its own fees and costs, thus ending this case.¹

3 SO STIPULATED,

4 Dated: September 24, 2009

5 KEKER & VAN NEST, LLP

6

7 By: /s/ Dan Jackson _____
8 DAN JACKSON
9 Attorneys for Defendants
10 GAP INTERNATIONAL SALES, INC., THE
11 GAP, INC., BANANA REPUBLIC, LLC, and
12 OLD NAVY, LLC

13 Dated: September 24, 2009

14 HOWARD RICE NEMEROVSKI CANADY
15 FALK & RABKIN

16

17 By: Concurrence obtained per General Order 45.X.B
18 MARTIN R. GLICK
19 Attorneys for Plaintiffs
20 GABANA GULF DISTRIBUTION, LTD., and
21 GABANA DISTRIBUTION, LTD.

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¹ As in the parties' December 17, 2007 stipulation, however, Gap specifically reserves its right to seek indemnification from Gabana, based on the indemnification provisions in Gap's contracts with Gabana, for legal fees, costs and other expenses incurred in connection with Roots Ready Made Garments Co. W.L.L., v. The Gap, Inc. et al., Case No. C 07 3363 CRB (N.D. Cal.). Gabana disputes that Gap has any legal basis for obtaining such indemnification.

1 **[PROPOSED] ORDER**

2 PURSUANT TO STIPULATION, IT IS SO ORDERED:

3 Gabana's claims for breach of the implied covenant of good faith and fair dealing, and
4 unfair competition are HEREBY DISMISSED WITH PREJUDICE.

5 Gap's claim for breach of contract is HEREBY DISMISSED WITH PREJUDICE.

6 This case is now closed.

7 The parties shall bear their own fees and costs.

8 **IT IS SO ORDERED.**

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10 Date: September 24, 2009



11 HONORABLE CHARLES R. BREYER

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